

### **REMARKS/ARGUMENTS**

In the Office Action mailed September 9, 2004, claims 2, 4-9, 11 and 13-22 were rejected. Applicants have thoroughly reviewed the outstanding Office Action including the Examiner's remarks and the references cited therein. The following remarks are believed to be fully responsive to the Office Action. All the pending claims at issue are believed to be patentable over the cited references.

### **SPECIFICATION**

Applicants have amended the claims to better conform with the specification and to correct typographical errors. Therefore, the Applicants respectfully request that the objection to the specification in view of claims 4 and 7 be withdrawn.

### **DRAWINGS**

Applicants have amended the claims to better conform with the drawings and to correct typographical errors. Therefore, the Applicants respectfully requests that the objection to the drawings in view of claims 4, 7, 13 and 14 be removed.

### **CLAIM REJECTIONS – 35 U.S.C. § 112**

Examiner rejected claims 2, 4-9, 11 and 13-17 under 35 U.S.C §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In light of the amendment to claims, Applicants hereby respectfully request that the rejection to these claims be removed.

### **CLAIM REJECTIONS – 35 U.S.C. § 102(b)**

The Examiner rejected claims 2, 4, 5, 7, 8, 11 and 13-17 under 35 U.S.C. §102(b) as being unpatentable over U.S. Patent 4,138,175 to Tattershall (hereinafter referred to as “Tattershall”). In light of the following remarks, Applicants respectfully submit that these claims are allowable as amended.

Initially, Applicants note that it is axiomatic that to qualify as an anticipation under Section 102, the cited reference must “bear within its four corners adequate directions for the practice of the patent invalidated.” (See, for example, Dewey & Almay Chemical Co. v. Mimex Co., Inc., 52 U.S.P.Q. 138 (2<sup>nd</sup> Cir. 1942)). Applicant respectfully submits that Tattershall embodies no such directions.

More particularly, Applicants respectfully submit that Tattershall does not disclose a support structure as presently claimed. The independent claims 4 and 13 have been amended to clarify that the invention relates to the apparatus support structure. The claims have been amended to explicitly state that which has been implicitly in the original claim language. As such, the claims have not been narrowed and no new issues or new matter have been raised or added.

Examiner states that Tattershall discloses a frame with peripheral rails and transverse rails, slotted strips being mounted to the cabinet and brackets with U-shaped channels which support the frame and connect to a slide that engages a guide. Tattershall discloses a freezer organizer structure and slide mechanism with rail 50 support at 44, 16 and 38.

In claim 4, Applicants claim, *inter alia*, an apparatus that includes a plurality of slotted strips vertically disposed; and a plurality of brackets, wherein each bracket is mounted proximal the slotted strips and supports the frame, wherein the brackets each have a first end, and wherein the first end has a generally upwardly facing U-shaped channel that receives and supports the frame and, wherein the frame has peripheral rails, and wherein channel and rails are sized so that only the channels support the rails at more than one point along the peripheral rails. Applicants note that Tattershall does not disclose a frame having peripheral rails wherein channel and rails are sized so that only the channels support the rails at more than one point along the peripheral rails. Tattershall shows horizontal guides with a channel sized to support the guides but not the rails as presently claimed and has a slide mechanism with rail 50 supported at 44, 16 and 38. For anticipation under 35 U.S.C. §102 the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present (M.P.E.P. 706.02). Since each and every element, as set forth in the claim, is not found either expressly or inherently described as required by M.P.E.P., Tattershall cannot be said to anticipate, teach or suggest the support structure of the present invention as claimed.

In claim 13, Applicants claim, *inter alia*, means for suspending the item; means for supporting the suspending means; and means for height adjustably mounting the supporting means to a housing, wherein the supporting means comprises a bracket having a first end with a generally U-shaped channel that receives and supports the suspending means, and a second end that engages a mounting means, wherein a frame has peripheral rails, and wherein channels and rails are sized so that only the channels support the rails at more than one point along the peripheral rails. Applicants note that Tattershall does not disclose a frame having peripheral rails

wherein channel and rails are sized so that only the channels support the rails at more than one point along the peripheral rails. Tattershall shows horizontal guides with a channel sized to support the guides but not the rails as presently claimed and has a slide mechanism with rail 50 supported at 44, 16 and 38. For anticipation under 35 U.S.C. §102 the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present (M.P.E.P. 706.02). Since each and every element, as set forth in the claim, is not found either expressly or inherently described as required by M.P.E.P., Tattershall cannot be said to anticipate, teach or suggest the support structure of the present invention as claimed.

In light of the foregoing arguments, withdrawal of the rejection of claims 2, 4, 5, 7, 8, 11 and 13-17 under 35 U.S.C. § 102(b) as being anticipated by Tattershall is respectfully requested.

In addition, the Examiner rejected claims 4, 6 and 9 under 35 U.S.C. §102(b) as being unpatentable over U.S. Patent 5,893,620 to Birgelis (hereinafter referred to as “Birgelis”). In light of the following remarks, Applicants respectfully submit that these claims are allowable as amended.

Initially, Applicants note that it is axiomatic that to qualify as an anticipation under Section 102, the cited reference must “bear within its four corners adequate directions for the practice of the patent invalidated.” (See, for example, Dewey & Almay Chemical Co. v. Mimex Co., Inc., 52 U.S.P.Q. 138 (2<sup>nd</sup> Cir. 1942)). Applicant respectfully submits that Birgelis embodies no such directions.

More particularly, Applicants respectfully submit that Birgelis does not disclose support structure as presently claimed. The independent claims have been amended to clarify that the

invention relates to the support structures. The claims have been amended to explicitly state that which has been implicitly in the original claim language. As such, the claims have not been narrowed and no new issues or new matter have been raised or added.

Examiner states that Birgelis discloses a frame with peripheral rails, slotted strips being vertically mounted to the cabinet and brackets which support the frame and connect rigidly to a the frame. Birgelis discloses a shelf system having horizontal grooves or channels at 44, 50 engaging rails and shelves at multiple points along their periphery.

In claim 4, Applicants claim, *inter alia*, an apparatus that includes a plurality of slotted strips vertically disposed; and a plurality of brackets, wherein each bracket is mounted proximal the slotted strips and supports the frame, wherein the brackets each have a first end, and wherein the first end has a generally upwardly facing U-shaped channel that receives and supports the frame and, wherein the frame has peripheral rails, and wherein channel and rails are sized so that only the channels support the rails at more than one point along the peripheral rails. Applicants note that Birgelis does not disclose a frame having peripheral rails wherein channel and rails are sized so that only the channels support the rails at more than one point along the peripheral rails. Birgelis shows a shelf system having horizontal grooves or channels at 44, 50 engaging rails and shelves at multiple points along their periphery. For anticipation under 35 U.S.C. §102 the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present (M.P.E.P. 706.02). Since each and every element, as set forth in the claim, is not found either expressly or inherently described as required by M.P.E.P., Birgelis cannot be said to anticipate, teach or suggest the support structure of the present invention as claimed.

In light of the foregoing arguments, withdrawal of the rejection of claims 4, 6 and 9 under 35 U.S.C. § 102(b) as being anticipated by Birgelis is respectfully requested.

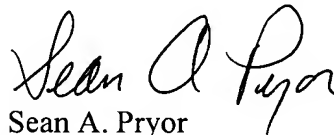
### CONCLUSION

In view of the foregoing remarks, Applicants respectfully requests the withdrawal of the objections and rejections accordingly. If, for any reason, the Examiner disagrees, please call the undersigned agent at 202-861-1748 in an effort to resolve any matter still outstanding before issuing another action. The undersigned agent is confident that any issue which might remain can readily be worked out be telephone.

In the event this paper is not time filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-2036.

Respectfully submitted,

BAKER & HOSTETLER LLP



Sean A. Pryor  
Reg. No. 48,103

**Date: December 8, 2004**

Washington Square, Suite 1100  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5304  
Telephone: 202-861-1500  
Facsimile: 202-861-1783